

**BEFORE THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
STATE OF CALIFORNIA**

In the Matter of:)	Case No. 2001-05AC
)	
GILBERTO GONZALES/SUSANA)	OAH No. L-2001070388
CRUZ, dba G.G. TIRES,)	
)	
Respondents.)	
_____)	

DECISION

After an administrative complaint was filed in the above-captioned matter, it was submitted by the parties to the Office of Administrative Hearings for decision, pursuant to a stipulation for issuance of administrative decision. Said stipulation, executed by the parties hereto, was made Exhibit "2" to the record. On August 17, 2001, a hearing was held, telephonically in this matter, before Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings. Ms. Lynda Williams, Staff Counsel to the California Integrated Waste Management Board represented Complainant; Respondents appeared telephonically. The parties confirmed their written stipulation to settle the matter, and their agreement that a decision could issue based on that stipulation. The matter is deemed submitted on that date. Pursuant to the parties' stipulation, Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, hereby issues the following decision.

FACTUAL FINDINGS

1. On or about November 13, 2000, the California Integrated Waste Management Board (hereafter either "the Board" or "CIWMB") issued an administrative complaint against Respondents Gilbert Gonzales and Susana Cruz, doing business as G.G. Tires. That Administrative Complaint bore case number 2001-05AC.
2. The Board issues Waste Tire Hauler Registration number 0913 to Respondent G.G. Tires on December 9, 1998. The law, at Public Resources Code ("PRC") section 42958, requires the operator to annually renew a waste tire hauler registration before it expires.
3. Respondents Gonzales and Cruz are the operators and managing agents of G.G. Tires.
4. G.G Tires failed to renew its waste tire hauler registration for the calendar year 2001. Thereafter, G.G Tires illegally hauled waste tires on January 1, 2001, without a proper registration and without proper manifests as required by PRC section 42951.5.
5. G.G. Tires has admitted it violated PRC section 42951 by hauling waste tires before renewing its registration, and it has since then submitted an application for renewal of its registration. That renewal was issued by the Board on February 6, 2001.
6. As referenced in the preamble above, the Board and Respondents agreed to settle the administrative proceeding commenced by filing of the Accusation, and entered into a written settlement agreement.
7. (A) Respondents, after having an opportunity to consult with independent counsel, entered into a written stipulation on or about August 9, 2001. That stipulation establishes the facts upon which the foregoing factual findings are based. Respondents have stipulated to take certain actions on their own part, and Respondents have further stipulated that the Board may issue this Decision based on their stipulation, and may take certain actions through this Decision, and to otherwise enforce the terms and conditions of the stipulation. The Respondents entered into the stipulation freely and voluntarily. No

representations of promises of any kind, other than those set forth in the parties' stipulation, were made by any party to the stipulation in order to induce any other party to enter into it.

- B) The parties agreed in writing that the stipulation could not be altered, amended or modified or otherwise changed except by a writing executed by each of the parties to the stipulation.
 - C) The parties agreed in the stipulation to execute and deliver any and all documents, and to take any and all actions necessary or appropriate to consummate the stipulation and to carry out its terms and provisions.
 - D) The parties agreed that the stipulation would be binding on, and inure to the benefit of the successors, heirs, and assigns of the parties to the stipulation.
 - E) The parties agreed that the stipulation and Decision would constitute the entire understanding of the parties concerning settlement of the above-captioned proceeding. The agreed there were no restrictions, promises, warranties, covenants, undertakings, or representations other than those expressly set forth in the stipulation or in separate written documents delivered or delivered within the stipulation. The parties agreed that they had not relied on any restrictions, promises, warranties, covenants, undertakings, or representations other than those expressly set forth in the stipulation.
8. Pursuant to the stipulation the Respondents have agreed to pay civil penalties of \$1,000, on terms and conditions set forth in the stipulation. G.G. tendered its check in that amount to the Board, said check being dated July 31, 2001. Notwithstanding that tender, the parties agreed that Respondents could make monthly payments of \$100.00 per month, and that if any payment was not received within five days of the due date, then the entire amount would be due and owing and the Board could enforce this decision as provided by applicable law.
 9. Respondents further agreed to abide by the terms and conditions of its waste tire hauler registration and to comply with the waste tire hauler requirements as provided in the Public Resources Code.
 10. Respondents agreed to deliver to the Board or to make available upon demand to an authorized representative all appropriate and relevant documentation, including but not limited to waste tire manifests establishing that any and all waste or used tires, moved on or in vehicles using the registration issued to Respondents, were and continue to be properly disposed of, at destinations that are authorized by the Board to accept waste tires. The parties further agreed where and when such documentation would be provided to the Board.
 11. The parties agreed that any failure by Respondents to comply with any terms of the settlement agreement constitute a default thereon, and that Board may enforce the agreement, and seek further penalties and fines as the circumstances may indicate.

LEGAL CONCLUSIONS

1. The Board has authority to issue the above-captioned administrative complaint for penalties, and to penalize Respondents for violations of the Public Resources Code, pursuant to sections 42950 through 42962 of the PRC, based on Factual Findings 1 through 11.
2. Respondents have violated PRC section 42951 and 42951.60, based on Factual Findings 1 through 5.
3. The terms and condition of the stipulation should become the decision of this tribunal and the Board pursuant to Government Code section 11415.60, based on Factual findings 1 through 11.
4. To facilitate enforcement, some language of the stipulation may be modified herein, and especially in the order following, so that words of agreement may become words of command. In the event there is any question of interpretation of the parties' obligations and rights under this Decision, the stipulation may be referenced for purposes of interpretation. This conclusion is based on Factual Findings 7(E), and Civil Code section 1642, and the terms of the parties' stipulation.

ORDER

1. Pursuant to the parties' stipulation and the foregoing Findings and Conclusions, Respondents shall pay to the Board the sum of \$1,000 as fines and civil penalties.
2. Respondents shall operate within the terms of their existing Waste Tire Hauler Registration, the terms of their stipulation for settlement, the Public Resources Code, and applicable regulation.
3. The failure of Respondents to comply with any of the terms of the parties' stipulation, or this Decision, shall be deemed a default, entitling the Board to commence immediate action to enforce the terms of the stipulation, or Decision, or both, including but not limited to the right to collect the sums due under the stipulation and this Decision. The Board may also seek further penalties and fines as are indicated by the relevant circumstances.
4. No covenant, promise, term, condition, breach, or default by Respondents under the stipulation or this Decision shall be deemed as waived by the Board except as expressly so stated in writing by the Board. Any waiver by the Board of any breach or default by Respondents under the stipulation or this decision shall not constitute or be deemed a waiver of any preceding or subsequent breach by Respondents, or any of them, of the stipulation or the orders and conditions set forth in this Decision. Acceptance by the Board of any payments due the Board under the stipulation or this Decision which payments are either untimely, or in an amount less than is due, or both, shall not be deemed as a waiver of any preceding or subsequent breach or default. Nor shall such action by the Board (*ie.*, acceptance of a late or partial payment) deprive the Board of its remedies under the stipulation or under the terms of this Decision.
5. Each party hereto shall execute and deliver any and all documents and shall take any and all actions necessary or appropriate to consummate the stipulation and to carry out its terms and provisions.

September 12, 2001

Joseph D. Montoya,
Administrative Law Judge,
Office of Administrative Hearings